

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

MALON BARRETT,

Plaintiff,

v.

No. CV 10-757 MV/GBW

RAY TERRY, Warden, Otero
County Processing Center,

Defendants.

ORDER QUASHING ORDER TO SHOW CAUSE

This matter is before the Court upon receipt of Plaintiff's Response to the Order to Show Cause (*doc. 11*). *See doc. 14*. As Plaintiff has now met the response deadline, the Order to Show Cause (*doc. 11*) is hereby QUASHED.

Plaintiff, however, has missed the deadline to respond to Defendant's Motion for Summary Judgment (*doc. 9*) by more than a month, and neither of his recent filings address the motion. *See docs. 12, 14*. As explained in the Order to Show Cause, under our Local Rules "[t]he failure of a party to file and serve a response in opposition to a motion within the time prescribed for doing so constitutes consent to grant the motion." D.N.M.LR-Civ 7.1(b). Nonetheless, it would be inappropriate for the Court to grant summary judgment for Defendants by operation of Local Rule 7.1 because of Plaintiff's failure to timely

respond. *Reed v. Bennett*, 312 F.3d 1190, 1193-95 (10th Cir. 2002); *Sizemore v. State of New Mexico Dept. Of Labor*, 182 F. App'x 848, 853 (10th Cir. 2006). Instead, the Court notes that Plaintiff has waived "the right to respond or to controvert the facts asserted in the summary judgment motion," and it will "accept as true all material facts asserted and properly supported in the summary judgment motion" when determining whether judgment under Rule 56 in favor of Defendants is appropriate. *Reed*, 312 F.3d at 1195.

IT IS SO ORDERED.



UNITED STATES MAGISTRATE JUDGE